

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the Matter of

ON-CALL MANAGEMENT, INC.  
Warrensburg, Missouri

Respondent

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Docket No. TSCA-07-2003-0291

**CONSENT AGREEMENT AND FINAL ORDER**

Introduction

Prior to the filing of complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is On-Call Management, Inc., 612 South Main Street, Apt. 7, Warrensburg, Missouri 64093.

### Complainant's Allegations

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

#### Allegations Pertaining to All Counts

1. On-Call Management, Inc., ("Respondent") is a Missouri corporation, and a "lessor" as defined at 40 C.F.R. § 745.103.
2. For all periods of time relevant to the violations alleged herein, Respondent was a lessor of the residential properties known as Brookside and Dellwood Apartments located in Warrensburg, Missouri.
3. The Properties were constructed prior to 1978.
4. The Properties are "target housing" as defined by 40 C.F.R. § 745.103.

#### Count I- Failure to Provide Pamphlet 601 South Main St., Apt. 10

The facts stated in Paragraphs 1 through 4 above, are herein restated and incorporated.

5. On or about June 10, 2002, Respondent entered into a rental agreement with Brian Clark for the lease of the Property, Apt. 10 Contract, for residential use (the "Apt. 10 Contract").
6. As a result of the Apt. 10 Contract described in Paragraph 5 above, Respondent became a "lessor," and Brian Clark became a "lessee," as those terms are defined by 40 C.F.R. § 745.103.
7. Brian Clark subsequently moved in to the Property.

8. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

9. Respondent did not provide an EPA-approved lead hazard information pamphlet to Brian Clark prior to being obligated under the rental Apt. 10 Contract described in Paragraph 5 above.

10. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Brian Clark prior to being obligated under the rental Apt. 10 Contract described in Paragraph 5 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count II- Failure to Provide Pamphlet  
612 South Main St., Apt. 11

The facts stated in Paragraphs 1 through 4 above, are herein restated and incorporated.

11. On or about May 4, 2002, Respondent entered into a rental agreement with Shawn Montgomery for the lease of the Property, Apt. 11 Contract, for residential use (the "Apt. 11 Contract").

12. As a result of the Apt. 11 Contract described in Paragraph 11 above, Respondent became a "lessor," and Shawn Montgomery became a "lessee," as those terms are defined by 40 C.F.R. § 745.103.

13. Shawn Montgomery subsequently moved in to the Property.

14. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

15. Respondent did not provide an EPA-approved lead hazard information pamphlet to Shawn Montgomery prior to being obligated under the rental Apt. 11 Contract described in Paragraph 11 above.

16. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Shawn Montgomery prior to being obligated under the rental Apt. 11 Contract described in Paragraph 11 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count III- Failure to Provide Pamphlet  
614 South Main St., Apt. 1

The facts stated in Paragraphs 1 through 4 above, are herein restated and incorporated.

17. On or about May 1, 2002, Respondent entered into a rental agreement with Katherine L. Hartley and Antonio C. Pecina for the lease of the Property, Apt. 1 Contract, for residential use (the "Apt. 1 Contract").

18. As a result of the Apt. 1 Contract described in Paragraph 17 above, Respondent became a "lessor," and Katherine L. Hartley and Antonio C. Pecina became a "lessee," as those terms are defined by 40 C.F.R. § 745.103.

19. Katherine L. Hartley and Antonio C. Pecina subsequently moved in to the Property.

20. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

21. Respondent did not provide an EPA-approved lead hazard information pamphlet to Katherine L. Hartley and Antonio C. Pecina prior to being obligated under the rental Apt. 1 Contract described in Paragraph 17 above.

22. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Katherine L. Hartley and Antonio C. Pecina prior to being obligated under the rental Apt. 1 Contract described in Paragraph 17 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count IV- Failure to Provide Pamphlet  
502 Anderson, Apt. D

The facts stated in Paragraphs 1 through 4 above, are herein restated and incorporated.

23. On or about July 30, 2002, Respondent entered into a rental agreement with Amanda Morman and Jenifer Kamler for the lease of the Property, Apt. D Contract, for residential use (the "Apt. D Contract").

24. As a result of the Apt. D Contract described in Paragraph 23 above, Respondent became a "lessor," and Amanda Morman and Jenifer Kamler became a "lessee," as those terms are defined by 40 C.F.R. § 745.103.

25. Amanda Morman and Jenifer Kamler subsequently moved in to the Property.

26. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

27. Respondent did not provide an EPA-approved lead hazard information pamphlet to Amanda Morman and Jenifer Kamler prior to being obligated under the rental Apt. D Contract described in Paragraph 23 above.

28. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Amanda Morman and Jenifer Kamler prior to being obligated under the rental Apt. D Contract described in Paragraph 23 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count V- Failure to Provide Pamphlet  
508 Anderson, Apt. E

The facts stated in Paragraphs 1 through 4 above, are herein restated and incorporated.

29. On or about August 17, 2002, Respondent entered into a rental agreement with Carmen Huesgan and Chad Kruse for the lease of the Property, Apt. E Contract, for residential use (the "Apt. E Contract").

30. As a result of the Apt. E Contract described in Paragraph 29 above, Respondent became a "lessor," and Carmen Huesgan and Chad Kruse became a "lessee," as those terms are defined by 40 C.F.R. § 745.103.

31. Carmen Huesgan and Chad Kruse subsequently moved in to the Property.

32. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

33. Respondent did not provide an EPA-approved lead hazard information pamphlet to Carmen Huesgan and Chad Kruse prior to being obligated under the rental Apt. E Contract described in Paragraph 29 above.

34. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Carmen Huesgan and Chad Kruse prior to being obligated under the rental Apt. E Contract described in Paragraph 29 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

#### Consent Agreement

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above.

2. Respondent waives its right to contest Complainant's allegations above, and its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F -Disclosure of Known Lead-Based Paint and /or lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of civil penalty in the amount of Seven Thousand Seven Hundred Dollars (\$7,700) to be paid in four payments. The first payment of One Thousand Nine Hundred and Twenty-Five Dollars (\$1,925) shall be due payable within thirty (30) days of the effective date of this Order. The second payment of One Thousand Nine Hundred and Twenty-Five Dollars (\$1,925) shall be due payable within sixty (60) days of the effective date of this Order. The third payment of One Thousand Nine Hundred and Twenty-Five Dollars (\$1,925) shall be due payable within ninety (90) days of the effective date of this Order. The fourth payment of One Thousand Nine Hundred and Twenty-Five Dollars (\$1,925) shall be due payable within thirty (120) days of the effective date of this Order.

6. Respondent understands that its failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently two percent (2%) per annum for the period January 1, 2003 thru December 31, 2003) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

7. Failure to submit any of the required payments by the respective due date may result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

8. Each signatory to this consent agreement certifies he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Seven Thousand Seven Hundred Dollars (\$7,700) which shall be paid in accordance with the provision of Paragraph 5 of the Consent Agreement above. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasurer" and remitted to:

EPA-Region VII  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Henry F. Rompage  
U.S. Environmental Protection agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.



RESPONDENT:  
ON-CALL MANAGEMENT, INC.

Date: 8.20.03

By: Robert Scullin  
ROBERT SCULLIN Secretary  
Print Name Title

COMPLAINANT:  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date: 8/25/02

By: William A. Spratlin  
William A. Spratlin  
Director  
Air, RCRA, and Toxics Division

Date: 8.25.03

By: Henry F. Rompage  
Henry F. Rompage  
Attorney

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date: August 26, 2003

Robert L. Patrick  
Robert L. Patrick  
Regional Judicial Officer  
EPA, Region VII

IN THE MATTER OF On-Call Management, Inc., Respondent  
Docket No. TSCA-07-2003-0291

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

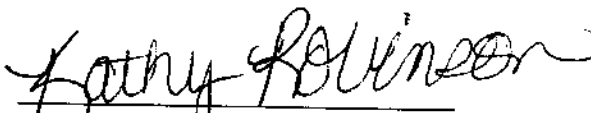
Copy hand delivered to  
Attorney for Complainant:

Henry F. Rompage  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

On-Call Management, Inc.  
612 South Main Street, Apt 7  
Warrensburg, Missouri 64093

Dated: 8/26/03

  
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Kathy Robinson  
Regional Hearing Clerk